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OFFICE OF THE SECRETARY

Magalie Salas, Secretary
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1919 M Street, Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of the Pay
Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of
1996, CC Docket No. 96-128

Dear Ms. Salas:

Please find enclosed for filing an original and fourteen
copies of the RBOC/GTE/SNET Payphone Coalition's Opposition to
Airtouch Paging's Petition for Waiver in the above-captioned
proceeding.

Please date-stamp and return the extra copy provided to the
individual delivering this package.

Sincerely,

Michael K. Kellogg /aml

Michael K. Kellogg

Enclosures

No. of Copies rec'd
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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED

JAN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the)	
Telecommunications Act of 1996)	

**THE RBOC/GTE/SNET PAYPHONE COALITION'S
OPPOSITION TO AIRTOUCH PAGING'S
PETITION FOR WAIVER**

The RBOC/GTE/SNET Payphone Coalition hereby opposes the Petition for Waiver filed by AirTouch Paging ("Petition for Waiver"). On its face, AirTouch's request simply makes no sense: the Commission has imposed no per-call compensation on AirTouch; the obligation is imposed solely on facilities-based IXC's. How -- and indeed whether -- the IXC's choose to pass the per-call compensation obligations on to their subscribers is solely within the IXC's discretion. In other words, because AirTouch has no obligation under FCC regulations to pay per-call compensation to PSPs, there is simply no requirement for the Commission to waive. For this reason alone, the Commission should deny AirTouch's petition out of hand.

But even if the Commission were generously to construe the AirTouch request as one for a waiver of the IXC's obligation to pay per-call compensation for payphone calls made to those 800 numbers to which AirTouch subscribes, the waiver request would still be meritless. To qualify for such a waiver, AirTouch would have to show that the IXC's obligation to pay per-call compensation somehow causes them special harm that the Commission failed to consider when it established the general rule. But the only special circumstance that AirTouch identifies -- that is,

the IXCs' alleged inability to block some payphone calls -- was considered by the Commission when it adopted the per-call compensation requirement on remand, and in any event does not justify any exemption from the per-call compensation requirement. Indeed, the Commission has already decided as much in denying PCIA's Motion for Stay.

And despite AirTouch's protestations to the contrary, the IXCs' compensation obligations threaten paging companies with no special harm that would justify a waiver, or, indeed, any substantial harm at all. The paging industry has not shown that it is particularly reliant on payphones. And, in any event, to the extent that AirTouch does choose to use the services that PSPs provide, there is no reason that it should not pay fair compensation for that service. To the contrary: the Commission's Payphone Orders simply ensure that PSPs be "fairly compensated for each and every completed call" made from a payphone. 47 U.S.C. § 276. The Telecommunications Act of 1996 requires no less.

I. AIRTOUCH HAS NO OBLIGATION TO PAY PER-CALL COMPENSATION TO PSPS.

AirTouch "requests that it be granted a limited waiver of its obligation to pay any PSP on a per-call basis unless and until that PSP provides Coding Digits and AirTouch is able to selectively block calls from payphones operated by that PSP." Petition for Waiver at 6. This is relief that the Commission simply cannot grant, because AirTouch cannot be relieved of a non-existent obligation.

It could not be clearer from the Payphone Orders that the per-call compensation obligation is imposed, not on the 800 subscriber, but on the IXCs. See First Report and Order, 11 FCC Rcd 20541, 20584, 20586 [¶¶ 83, 86] (1996); Order on Recon., 11 FCC Rcd 21233,

21275, 21277 [¶¶ 88, 92] (1996). The PCIA appealed the Commission's "carrier-pays" compensation mechanism, but the court of appeals explicitly upheld the Commission's choice. See Illinois Public Telecomm. Ass'n v. FCC, 117 F.3d 555, 567 (D.C. Cir. 1997). AirTouch is not, and does not claim to be, a facilities-based carrier subject to the obligation to pay per-call compensation.

AirTouch's request is therefore nonsense, and the Commission should reject it out of hand. But the request does suggest just how pervasively the Commission's recent orders have been misunderstood by 800 subscribers. In imposing the per-call compensation obligation on facilities-based IXC's, the Commission noted that how -- and indeed whether -- the IXC's chose to pass on such obligations to their subscribers and other customers would be their own business decision. First Report and Order, 11 FCC Rcd at 20584 [¶ 83]. In other words, the IXC's are under absolutely no regulatory obligation to pass per-call compensation payments through to their customers, either on a per-call basis, or at all.

But the IXC's have taken advantage of the payphone compensation proceeding to justify not merely an increase in per-call charges to their customers, but also to justify across-the-board increases in subscriber 800 rates. The IXC's have thus blamed Congress, the Commission, and PSP's for rate increases that to all appearances have far exceeded their own compensation obligations. At the same time, IXC's have reaped hundreds of millions of dollars in cost savings through the elimination of state and federal access charges due to the deregulation of payphones. The IXC's have yet to point to any evidence that they have passed such savings through to their customers.

II. EVEN IF BENEVOLENTLY CONSTRUED, AIRTOUCH'S WAIVER REQUEST IS UTTERLY UNJUSTIFIED

AirTouch may well ask the Commission's indulgence and suggest that its petition should be construed as a request that IXCs' per-call compensation obligation be waived for calls made from payphones to those 800 numbers to which it subscribes. Such a request also lacks any legal or factual basis and should be denied.

To qualify for a waiver, a petitioner must show that "special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest." Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). "This language refers to circumstances that were not present or considered when the rule was adopted." Memorandum Opinion and Order, Petitions for Waiver of Part 69 of the Commission's Rules to Establish Switched Access Rate Elements for SONET-based Service, 11 FCC Rcd 21010, 21021 (1996) (citing Industrial Broadcasting Co. v. FCC, 437 F.2d 681, 683 (D.C. Cir. 1969)). AirTouch cannot make such a showing.

AirTouch devotes the bulk of its petition to arguing that its inability to block calls is such a "special circumstance" justifying a waiver of its compensation obligations. But this argument fails on two grounds. First of all, the Commission clearly did consider the fact that call blocking was not yet universally available when it adopted the Second Report and Order. AirTouch claims that "[t]he Bureau's sua sponte waiver of LECs' and PSPs' Coding Digits obligations constitutes a material adverse change." Petition for Waiver at 8. This is flatly incorrect: in granting the limited waiver of the Coding Digit requirement, the Commission recognized that IXCs would be unable to block some payphone calls in real time. The Commission found a

waiver to be in the public interest nonetheless “because the mandate of Section 276 is that the Commission adopt rules that provide PSPs with per-call compensation, and the waiver will most expeditiously lead to this result.” Waiver Order, CC Docket 96-128, DA 97-2162, ¶ 13 (rel. Oct. 7, 1997) (“Waiver Order”). And the Commission in turn explicitly considered the waiver order in the Second Report and Order. See, e.g., Second Report and Order, CC Docket 96-128, FCC 97-371, ¶ 5 (rel. Oct. 9, 1997) (“Second Report and Order”).

Second, IXCs' alleged inability to block calls made from a minority of payphones simply does not justify excusing IXCs from their per-call compensation obligations. AirTouch's claims that “selective call blocking . . . is a fundamental underpinning of . . . market-based rates” such that a waiver of the per-call compensation requirement is “equivalent” to a waiver of the coding digit requirement. Petition for Waiver at 5-6. But the Commission has already properly rejected this argument when it rejected PCIA's Motion for Stay.

Like AirTouch, PCIA had argued that “the Commission justified the use of the market-based standard on the ground that carriers could block calls, and the inability of carriers to do so at this time thwarts the justification for the compensation method.” Memorandum Opinion and Order, CC Docket 96-128, DA 97-2622, ¶ 6 (rel. Dec. 17, 1997) (“Dec. 17 Order”). The Commission disagreed, noting that it had established a default per-call rate precisely “because certain call blocking capabilities are not yet available to participants in the provision of access code and subscriber 800 calls from a payphone.” Dec. 17 Order ¶ 8. That is, the default rate is designed to ensure that PSPs are “fairly compensated,” 47 U.S.C. § 276, for each payphone call, even though competitive market conditions may not yet exist. See Dec. 17 Order ¶ 8.

AirTouch thus ignores the fundamental purpose of the default rate, that is, to ensure that, in the absence of a negotiated rate, PSPs will receive, and IXC's will pay, fair compensation for all calls, as Congress mandated. Though the absence of call blocking for some payphones may reduce IXC's negotiating leverage in the short term, this simply says nothing about whether the \$.284 default rate is fair. Indeed, AirTouch never claims that the default rate is unfair.¹

AirTouch's suggestion that the limited waiver of the coding digit requirement justifies a waiver of compensation obligations is thus wholly without merit: indeed, the point of the limited waiver was to ensure that all PSPs would receive compensation despite delays in transmission of payphone-specific digits for a minority of payphones. See Waiver Order ¶¶ 9, 13.

Nor does the alleged harm that AirTouch will suffer justify any relief. AirTouch argues that the Commission failed to take adequate account of the harm that the obligation to pay per-call compensation would cause "to other parties." Petition for Waiver at 11. But this argument fails both because the Commission has already held that the equities do not favor paging companies like AirTouch, and because AirTouch does not and cannot show that the per-call compensation requirement will cause it any substantial harm.

In granting the limited waiver of LECs' obligation to transmit payphone-specific digits, the Commission held that the waiver would serve the public interest because it would ensure that PSPs receive compensation for calls placed from their phones, and because it would not "significantly harm any parties." Waiver Order ¶¶ 11, 12. And in denying PCIA's request for a

¹The Commission has already explained why its choice of a default rate did not depend on the availability of call blocking. See Dec. 17 Order ¶¶ 7-9. And the Coalition has explained in its Petition for Reconsideration (filed Dec. 1, 1997) that it believes that the default rate is too low, not too high.

stay of the per-call compensation obligations, the Commission “similarly conclude[d] . . . that the equities under the circumstances and goals of Section 276” did not justify any special relief from per-call compensation for the paging companies. Dec. 17 Order ¶ 10.

AirTouch gives the Commission no reason to reconsider those conclusions. AirTouch suggests that the Commission “grossly underestimated the nature and extent of the harm” that AirTouch would suffer in the absence of call blocking. But this claim is wholly unsupported by record evidence. Indeed, there is no reason to believe that paging companies rely to any significant degree on toll-free calls made from payphones. Paging companies' customers have no special need to make toll free calls from payphones: normally, the customers would respond to a page by dialing the number transmitted to them. And the parties that call the 800 number to page that customer are equally unlikely to use a payphone: even if the payphone accepts incoming calls, the individual placing the page would literally have to wait by the payphone for the paging customer to return the page. This may occur occasionally, but it hardly suggests that AirTouch's potential liability is “unlimited.” See Petition for Waiver at 12.²

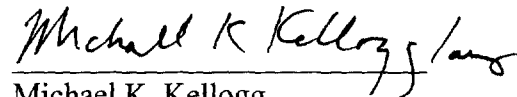
More fundamentally, AirTouch never explains -- and indeed cannot explain -- how the requirement that it pay fair compensation for the payphone services it chooses to consume constitutes harm at all. The Commission's methodology was designed to ensure that each call made from a payphone bears an equal share of the joint and common costs of providing payphone service. See Second Report and Order ¶ 42. There is nothing unfair in requiring AirTouch, like any other consumer of telecommunications services, to pay for the services it

²This may be the reason that paging companies like Mtel have felt free to begin blocking calls from payphones -- the impact on the services they provide is minimal. See Mike Mills, That New Number: 1-800-BLOCKED, Wash. Post, at B11 (Dec. 3, 1997).

chooses to use. Congress has mandated that PSPs must be “fairly compensated for each and every . . . call using their payphone.” 47 U.S.C. § 276(b)(1)(A). To the extent that AirTouch is complaining that its free ride on PSPs' investment has come to an end, its complaint is with Congress, not the Commission.

Finally, it goes almost without saying that a waiver here would not be in the public interest. As the Commission has recognized, delay in the provision of per-call compensation threatens to reduce the number of payphones deployed, in derogation of Congress's express mandate. See Dec. 17 Order ¶ 12.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K Kellogg /ans", written over a horizontal line.

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January 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 1998, I caused copies of the foregoing RBOC/GTE/SNET Payphone Coalition's Opposition to Airtouch Paging's Petition for Waiver to be served upon the parties on the attached service list by first-class mail; hand delivery indicated by asterisk.


Marilyn R. Leland

FEDERAL COMMUNICATIONS COMMISSION
Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128, Second Report and Order

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